

NEAL & HARWELL, PLC

LAW OFFICES

150 FOURTH AVENUE, NORTH

SUITE 2000

NASHVILLE, TENNESSEE 37219-2498

TELEPHONE

(615) 244-1713

FACSIMILE

(615) 726-0573

May 18, 2004

JAMES F. NEAL
AUBREY B. HARWELL, JR.
JON D. ROSS
JAMES F. SANDERS
THOMAS H. DUNDON
RONALD G. HARRIS
ALBERT F. MOORE
PHILIP N. ELBERT
JAMES G. THOMAS
WILLIAM T. RAMSEY
JAMES R. KELLEY
MARC T. MCNEANEY
GEORGE H. HATE, III
PHILIP D. IRWIN
A. SCOTT ROSS
GERALD D. NEENAN

AUBREY B. HARWELL, III
W. DAVID BRIDGERS
KENDRA E. SAMSON
MARK P. CHALOS
DAVID G. THOMPSON
CYNTHIA S. PARSON
KELTIE L. HAYS
CHRISTOPHER D. BOOTH
RUSSELL G. ADKINS
ELIZABETH S. TIPPING

OF COUNSEL
JOHN D. CLARKE

The Honorable Kim Beals, Pre-Arbitration Officer
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37238

Re: Docket Nos. 03-00585 (consolidated)

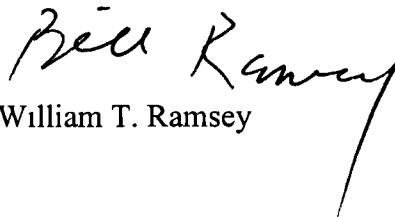
Dear Ms. Beals:

Enclosed is an original and sixteen copies of the following:

1. Response of The Rural Independent Coalition to BellSouth Telecommunications, Inc.'s Motion to Quash in Part, or in the Alternative, to Modify and Limit Subpoena.

Please call me if you have any questions.

Sincerely,


William T. Ramsey

Enclosures

**BEFORE THE
TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE**

IN RE:)
Petition of Cellco Partnership d/b/a Verizon Wireless) **Docket No. 03-00585**
for Arbitration under the Telecommunications Act)
)

**RESPONSE OF THE RURAL COALITION
TO BELL SOUTH TELECOMMUNICATIONS, INC.'S
MOTION TO QUASH IN PART, OR IN THE
ALTERNATIVE, TO MODIFY AND LIMIT SUBPOENA**

The Rural Coalition of Small Local Exchange Carriers and Cooperatives (hereinafter referred to as the "Coalition" or "Rural Independents") respectfully submits this response to the motion of BellSouth Telecommunications, Inc. to quash in part, or, in the alternative, to modify and limit subpoena (hereinafter referred to as the "Motion to Quash").

BellSouth Telecommunications, Inc. (hereinafter "BellSouth") has moved to quash in part, or, in the alternative, to modify and limit the subpoena served upon BellSouth upon the request of the Coalition. In its motion, BellSouth raises three basic objections:

1. BellSouth seeks to produce copies of its original documents if it can be reimbursed for its copying costs or, alternatively, make the items available where they are ordinarily kept in Birmingham;

2 BellSouth objects to the breadth of the documents requested in Item 2 under the subpoena, which requires BellSouth to produce "copies of all agreements, contracts and documents between BellSouth and each CMRS provider covering the period from August 8, 1996 to the present;"

3. BellSouth objects to producing the documents requested under Item 3 of the subpoena duces tecum, which seeks "copies of all correspondence or any other documented

communication between BellSouth and each CMRS provider (including, but not limited to correspondence between counsel) that address, discuss or refer to 'meet point billing' or any interconnection arrangement that is associated with traffic terminated in a rural independent network or discusses in any way the issues in this proceeding or the arbitration involving the CMRS providers of the Rural Independent Coalition."

The Coalition will address each of these objections below.

1. BellSouth's proposal to produce copies of the relevant documents or, make the documents available in Birmingham.

The Coalition has no problem with BellSouth's proposal to produce copies and the Coalition will reimburse BellSouth for its copying costs. Counsel for the Coalition will confer with counsel for BellSouth so that appropriate arrangements can be made.

2. BellSouth's objection to Item 2 in the subpoena.

BellSouth objects to this request on three basic grounds. First, BellSouth asserts that the subpoena should be limited to only those CMRS providers doing business in Tennessee. Second, BellSouth objects to the request for documents dating back to 1996. Third, BellSouth objects to the description of "all other agreements, contracts and documents between BellSouth and each CMRS provider." Accordingly, BellSouth seeks to limit Item 2 to "copies of all contracts from January 2000 to the present between BellSouth and each CMRS provider in Tennessee."

The Coalition obviously has no problem with agreeing that this request only relates to contracts between BellSouth and each CMRS provider that is a party to this proceeding. In fact, it is respectfully submitted that a reasonable reading of the subpoena would indicate that the request relates solely to CMRS providers that are parties to this proceeding.

However, the Coalition cannot agree to limiting BellSouth's response to contracts, agreements or documents evidencing agreements between BellSouth and the CMRS providers

solely from January 1, 2000 to the present. In its opposition, BellSouth merely makes the conclusory statement that “this eight-year span is also unreasonably broad.” BellSouth provides no support for this argument other than the conclusory statement. The burden is on BellSouth to show that this request is unreasonably burdensome, and it has woefully failed to do so.

The request for eight years of documents is reasonable. By the request of the documents over this span, the Rural Independents are seeking support of their claim that they have provided the CMRS providers with indirect interconnection through BellSouth since the passage of the 1996 telecommunications Act. The Coalition is entitled to obtain discovery of the terms and conditions of the arrangements over this eight-year span between BellSouth and the CMRS providers. Accordingly, the subpoena should not be limited to the time span between January 1, 2000 to the present, but should include all such contracts, agreements or similar documents existing since the passage of the 1996 Telecommunications Act.

BellSouth’s final objection to this request is that the documents are not described with particularity and that BellSouth “believes that much of the material that would be responsive does not relate in any fashion to the pending docket.” Apparently, BellSouth seeks to limit its response to documents it determines, in its sole discretion, to be “relevant to the pending docket.” The Coalition will agree to limit its request to all agreements, contracts or documents evidencing such agreements or contracts between BellSouth and each CMRS provider that is a party to this proceeding. The Coalition does not and will not agree to limit its request solely to contracts relating to items BellSouth considers to be relevant in its discretion. The BellSouth proposal is simply too narrow. Counsel for the Coalition will seek to confer with counsel for BellSouth and attempt to come to a compromise agreement on this issue.

3. BellSouth's objection to Item 3.

BellSouth also asserts that request number 3 is too broad. BellSouth ignores the fact that this request is very precise. This request seeks only correspondence between BellSouth and each CMRS provider that addresses, discusses or refers to "meet point billing" or any interconnection agreement associated with traffic terminated on a rural independent network or discusses this proceeding or this arbitration.

BellSouth again seeks to unduly limit this request. The Coalition is certainly entitled to review correspondence and communications between BellSouth and each CMRS provider that is a party to this proceeding that discusses or refers to "meet point billing." After all, it is BellSouth that has argued that "meet point billing" has recently been implemented and therefore "times have changed" in the arrangements between the CMRS providers and BellSouth and the Coalition. *See* Brief of BellSouth Telecommunications, Inc. Regarding Status of Outstanding Motions and Procedural Proposal filed in docket number 00-00523 on February 24, 2004 at p. 2. Certainly, the Coalition should be entitled to explore the communications between BellSouth and the CMRS providers that discuss or refer to "meet point billing" and when such a change in the arrangement was allegedly made.

Similarly, the Coalition should be entitled to obtain communications between BellSouth and each CMRS providers that discuss "interconnection arrangements that are associated with traffic terminated on a rural independent network." Those communications are obviously relevant to the issues in this proceeding.

Finally, the Coalition should be entitled to all communications between the CMRS providers and the Rural Independent Coalition, which discuss in any way the issues in this proceeding or the arbitration involving the CMRS providers and the Rural Coalition. Obviously,

the Coalition should be able to discover discussions between BellSouth and the CMRS providers regarding this proceeding. It is obvious, that, in many of the filings with the Tennessee Regulatory Authority, BellSouth and the CMRS providers have taken positions that are amazingly similar. The Coalition is entitled to discover discussions between BellSouth and the CMRS providers regarding any unified positions they are taking or any efforts to coordinate their efforts in this proceeding. Accordingly, BellSouth's proposal to narrow request number 3 should be denied. However, as always, counsel for the Coalition is willing to confer with counsel for BellSouth Communications to attempt to work out a compromise.

Conclusion

Accordingly, the Coalition respectfully requests that the Hearing Officer deny BellSouth's motion to quash in part, or in the alternative, to modify and limit the subpoena, Except that the Coalition will agree to allow BellSouth to produce copies of the documents requested at the Coalition's expense and to clarify the requests to assure BellSouth that the CMRS providers referred to in the subpoena refer only to those CMRS providers that are parties to this proceeding.

Respectfully submitted,

NEAL & HARWELL, PLC

By: 

William T. Ramsey
2000 One Nashville Place
150 Fourth Avenue North
Nashville, Tennessee 37219
(615) 244-1713 Telephone
(615) 726-0573 Facsimile

KRASKIN, LESSE & COSSON, LLC

By: Stephen G. Kraskin
Stephen G. Kraskin
Kraskin, Lesse & Cosson LLC
2120 L St. N.W. Suite 520
Washington, D.C. 20037
(by wife)

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that a true and correct copy of the foregoing has been served on the parties of record indicated below via U.S. Mail and via electronic mail on this the 18th day of May, 2004.

Wm J. Ramsey

Russ Minton, Esq.
Citizens Communications
3 High Ridge Park
Stamford, Connecticut 06905

Henry Walker, Esq.
Boult, Cummings, et al.
PO Box 198062
Nashville, TN 37219-8062

Jon E. Hastings, Esq.
Boult, Cummings, et al.
PO Box 198062
Nashville, TN 37219-8062

James Wright, Esq.
Sprint
14111 Capitol Blvd.
NCWKFR0313
Wake Forest, North Carolina 27587

J. Gray Sasser
J. Barclay Phillips, Esq.
Dan Elrod, Esq.
Miller & Martin
1200 One Nashville Place
150 Fourth Avenue North
Nashville, TN 37219

James Lamoureux, Esq.
AT&T
1200 Peachtree St. N.E.
Atlanta, Ga. 30309

Donald L. Scholes
Branstetter, Kilgore, et al.
227 Second Ave. N.
Nashville, TN 37219

Timothy Phillips, Esq.
Office of the Tennessee Attorney General
PO Box 20207
Nashville, TN 37202

Guy M. Hicks, Esq.
Joelle Phillips, Esq.
BellSouth Telecommunications, Inc.
333 Commerce St., Suite 2101
Nashville, TN 37201-3300

Elaine Critides, Esq.
John T. Scott, Esq.
Charon Phillips, Esq.
Verizon Wireless
1300 I Street N.W.
Suite 400 West
Washington, D.C. 20005

Paul Walters, Jr., Esq.
15 East 1st Street
Edmond, OK 73034

Suzanne Toller, Esq.
Davis Wright Temaine
One Embarcadero Center #600
San Francisco, Calif. 94111-3611

Beth K. Fujimoto, Esq.
AT&T Wireless Services, Inc.
7277 164th Ave., N.E.
Redmond, WA 90852

Monica M. Barone, Esq.
Sprint
6450 Sprint Parkway
Overland Park, KS 66251

Mr. Tom Sams
Cleartalk
1600 Ute Ave.
Grand Junction, CO 81501

Dan Menser, Esq.
Marin Fettman, Esq.
c/o T Mobile USA, Inc.
12920 SE 38th St.
Bellevue, WA 98006

Mark J. Ashby
Cingular Wireless
5565 Glennridge Connector
Suite 1700
Atlanta, GA 30342